

FUNDING AGREEMENT

BETWEEN:

CITY OF HAMILTON

(the “**City**”)

-and-

(the “**Recipient**”)

WHEREAS the City has the authority pursuant to the *Child Care and Early Years Act, 2014* (Ontario), to enter into this Agreement for the provision of child care and early years services;

AND WHEREAS the Recipient has agreed to provide child care and early years services described in the schedule(s) attached hereto;

AND WHEREAS the City has agreed to provide funding to the Recipient for the purpose of delivering said child care and early years services;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties hereby agree as follows:

ARTICLE 1 INTERPRETATION AND DEFINITIONS

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

“Agreement” means this agreement entered into between the City and the Recipient and includes all the schedules described in section 27.1

“Funding Appendix” means the budget included in the Schedules.

“business day” means any day on which the administrative offices of the City are open.

“Claims” means any and all liability, loss, costs, damages and expenses (including legal fees on a substantial indemnity basis), causes of action, actions, claims, demands, lawsuits or other proceedings.

“Effective Date” means the date the Agreement is signed by both Parties.

“Eligible Costs” means the costs which are determined from time to time by the Ministry and/or the City as eligible for reimbursement.

“Event of Default” has the meaning ascribed to it in section 13.1

“Force Majeure” has the meaning ascribed to it in Article 25.

“City of Hamilton Child Care and Early Years Operating Guidelines” means the guidelines published by the City on its website, as amended from time to time, to provide guidance to the Recipient regarding proper childcare operations and expenditures of Funding in order to comply with relevant legislation, this Agreement and various City policies and procedures;

“Funding Year” means the 12-month period commencing January 1 and ending December 31.

“Funds” means the money the City provides to the Recipient pursuant to the Agreement.

“HST” means harmonized sales tax pursuant to the *Excise Tax Act* (Canada).

“Indemnified Parties” means the City and its officials, officers, directors, employees, servants, agents, volunteers, affiliates, contractors, and representatives.

“Material Change” means any reorganization, amalgamation, bulk sale of assets, dissolution, any transfer or issue by sale, assignment, bequest, inheritance, operation of law, or other disposition, or by subscription, of any part or all of the shares or units of the Licensee which would result in any change in the direct or indirect control of the Recipient, or other restructuring of any material kind;

“Ministry” means the Ministry of Education of the Province of Ontario, or such other Ontario Ministry or Ministries with responsibility for child care and social services.

“Notice” means any communication given or required to be given under Agreement.

“Parties” means the City and the Recipient.

“Party” means either the City or the Recipient.

“Provincial Agreement” means the agreement between the City and the Ministry whereby the City receives funding from the Ministry in order to deliver or facilitate child care and social services, as the same may be amended, renewed, extended or replaced from time to time.

“Reports” means the reports described in the Schedules.

“Services” means the services described in the Schedules.

“Schedules” means the schedules describing the Services, Budget, Reports and other matters pertaining to the grant of Funds, whether or not they are physically attached to this Agreement.

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. The Recipient represents, warrants and covenants that:

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to provide the Services; and
- (c) any information the Recipient provided to the City in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.

2.2 Execution of Agreement. The Recipient represents and warrants that:

- (a) it has the full power and authority to enter into the Agreement; and
- (b) it has taken all necessary actions to authorize the execution of the Agreement.

- 2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain for the period during which the Agreement is in effect, by-laws or other legally necessary instruments to:
- (a) establish procedures to ensure the ongoing effective functioning of the Recipient;
 - (b) establish decision-making mechanisms;
 - (c) provide for the prudent and effective management of the Funds;
 - (d) establish procedures to enable the successful provision of Services;
 - (e) establish procedures to enable the timely identification of risks to the provision of Services and strategies to address the identified risks;
 - (f) establish procedures to enable the preparation and delivery of all Reports required pursuant to Article 6; and
 - (g) deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the City with proof of the matters referred to in this Article 2.

ARTICLE 3 TERM OF THE AGREEMENT

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall continue in effect until terminated pursuant to Article 11, 12 or 13.

ARTICLE 4 FUNDS AND PROVISION OF SERVICES

- 4.1 **Funds Provided.** The City shall:
- (a) provide the Recipient the Funds for the purpose of providing the Services; and
 - (b) provide the Funds to the Recipient in accordance with the payment plan described in the Schedules.
- 4.2 **Deduction to Funds.** The Funds shall be reduced by the amount of fees, where applicable, determined in accordance with the income test in sections 8 through 12 of Ontario Regulation 138/15 under the *Child Care and Early Years Act, 2014* (Ontario) and the Ontario Child Care Service Management and Funding Guidelines, required to be paid by the parent.

The Recipient shall not require the parent or guardian of a child to pay any fees in excess of those determined under said Regulation and Guidelines.

4.3 Limitation on Payment of Funds. Despite section 4.1, the City;

- (a) shall not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 10.2;
- (b) is not obligated to provide installments of Funds until it is satisfied with the continued provision of Services; and
- (c) may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the City's assessment of the information provided by the Recipient pursuant to section 6.1.

4.4 Use of Funding and Services. The Recipient shall:

- (a) deliver the Services:
 - (i) in accordance with the description set out in the Schedules and otherwise in accordance with the terms and conditions of the Agreement;
 - (ii) in accordance with the policies, guidelines and requirements of the City as communicated to it from time to time, including, but not limited to, the City's Early Years System Equity, Diversity, Inclusion and Belonging Policy, any guidelines and requirements imposed by the Ministry;
 - (iii) in accordance with the policies, guidelines and requirements of the City of Hamilton's Early Years Quality Program; and
 - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Services, including without limitation legislation relating to privacy, human rights and child protection;
- (b) where required by applicable legislation, hold a valid, unconditional licence under the *Child Care and Early Years Act, 2014* (Ontario) at all times;
- (c) use the Funds only for the purpose of providing the Services; and
- (d) spend the Funds only in accordance with the Budget and towards the Eligible Costs.

- 4.5 **No Changes.** The Recipient shall:
- (a) not make any changes to the Services and/or the Budget without the prior written consent of the City; and
 - (b) abide by the terms and conditions the City may require pursuant to any consent.
- 4.6 **Re-Negotiation of Budget.** The Parties agree that the Budget will be negotiated from time to time while the Agreement is in force. In the event the Budget is not re-negotiated by the expiry of the Funding Year, payments will continue to be made in accordance with the Budget for the immediately preceding Funding Year until such time as the Budget is re-negotiated or the Agreement is terminated. The Parties acknowledge and agree that the quantum of the Budget may vary from time to time, and accordingly, the amounts set out in the Schedules may vary from year to year and from time to time.
- 4.7 **Payment of Funds.** Notwithstanding anything to the contrary in the Schedules, the City reserves the right to determine the installments, times and manner of payment of the Funds.
- 4.8 **Interest Bearing Account.** If the City provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.
- 4.9 **Interest.** If the Recipient earns any interest on the Funds:
- (a) the City may deduct an amount equal to the interest from any further installments of Funds; or
 - (b) the Recipient shall pay an amount equal to the interest to the City as directed by the City.
- 4.10 **HST.** The Recipient shall not use the Funds for any HST costs for which it has or will receive a rebate, tax credit, input tax credit or refund.
- 4.11 **Disposition.** The Recipient shall not sell, change the use or otherwise dispose of any item, furnishing or equipment purchased with the Funds pursuant to the Agreement without the prior written consent of the City, which may be given subject to such conditions as the City deems advisable.

ARTICLE 5 CONFLICT OF INTEREST

- 5.1 **No Conflict of Interest.** The Recipient shall perform the Services and use the Funds without an actual, potential or perceive conflict of interest.

5.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interest that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Services and the use of the Funds.

5.3 **Disclosure to City.** The Recipient shall:

- (a) disclose to the City, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
- (b) comply with any terms and conditions that the City may reasonably prescribe as a result of the disclosure.

ARTICLE 6 REPORTING, ACCOUNTING AND REVIEW

6.1 **Preparation and Submission.** The Recipient shall:

- (a) submit to the City at the address provided in section 18.1, all Reports in accordance with the timelines and content requirements set out in the Schedules, or in a form as specified by the City from time to time;
- (b) submit to the City at the address provided in section 18.1, any other reports requested by the City in accordance with the timelines and content requirements specified by the City;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the City; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

6.2 **Record Maintenance.** The Recipient shall keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Services in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Services;

for a period for a period of seven years from the date of expiry or termination of the Agreement.

- 6.3 **Inspection.** The City, its authorized representatives or an independent auditor identified by the City may, at its own expense, upon 24 hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the provision of Services and the Recipient's expenditure of the Funds and, for these purposes, the City, its authorized representatives or an independent auditor identified by the City may:
- (a) inspect and copy the records and documents referred to in section 6.2; and
 - (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Services.
- 6.4 **Disclosure.** To assist in respect of the rights set out in section 6.3, the Recipient shall disclose any information reasonably requested by the City, its authorized representatives or an independent auditor identified by the City, and shall do so in a form reasonably requested by the City, its authorized representatives or an independent auditor identified by the City, as the case may be.
- 6.5 **No control of Records.** No provision of the Agreement shall be construed so as to give the City any control whatsoever over the Recipient's records.
- 6.6 **Provincial Requirements.** The Recipient acknowledges that pursuant to the Provincial Agreement, the City is required to comply with certain accounting and reporting requirements. The Recipient agrees to provide the City with such records, documents and information at such times and to do any other thing or things as may be necessary or desirable in order for the City to comply with the accounting and reporting requirements set out in the Provincial Agreement. The Recipient agrees to indemnify and save harmless the City in the event of a breach of such obligations by the Recipient.

ARTICLE 7 CONFIDENTIALITY

- 7.1 **Duty of Confidentiality.** The Recipient, its directors, officers, employees, agents and volunteers shall hold confidential and shall not disclose or release to any person other than applicable City staff at any time during or following the term of the Agreement, except where required or permitted by law, any information or document that tends to identify any individual in receipt of Services without obtaining the written consent of the individual or the individual's parent or guardian prior to the release or disclosure of such information or document.

ARTICLE 8

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 8.1 **MFIPPA.** The Recipient acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the City in connection with the Services or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act.

ARTICLE 9

LIMITATION OF LIABILITY AND INDEMNITY

- 9.1 **Limitation of Liability.** The City shall not be responsible in any way for provision of the Services. The City and the Indemnified Parties shall not be liable to the Recipient, its subcontractors or their respective officials, officers, directors, employees, servants, partners, agents, affiliates, volunteers, contractors, and representatives for Claims howsoever caused that arise out of or are in any way related to the Services or the Agreement.
- 9.2 **Indemnification.** The Recipient shall defend, indemnify and hold harmless the City from and against any and all Claims, by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Recipient, its subcontractors or their respective officials, officers, directors, employees, servants, partners, agents, affiliates, volunteers, contractors, and representatives in the course of providing the Services under, or otherwise in connection with, the Agreement. The Recipient further agrees to indemnify and hold harmless the City for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City, claimed or resulting from such Claims.

ARTICLE 10

- 10.1 **Recipient's Insurance.** The Recipient shall, at its own expense, including the cost of deductibles, obtain and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

Commercial General Liability Insurance written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation) and contingent employer's liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence. If a policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. Coverage shall be included for injury/loss/damage, due to pollution arising from "hostile fires";

Abuse and Sexual Misconduct Liability Insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence or alternatively, the Commercial General Liability policy shall not exclude coverage for Abuse and/or Sexual Misconduct, and same shall be noted on the certificate of insurance;

Standard Form Automobile Liability Insurance (if applicable) that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per occurrence;

Non-Owned Automobile Liability Insurance (if applicable) in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Recipient, that are used or operated on its behalf for the provision of services under the Agreement;

Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits for coverages. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverages apply and indicate any applicable aggregates;

Property Insurance in an amount not less than the replacement cost of the property being funded under this Agreement for all risk or broad perils coverage. The City of Hamilton to be shown as Loss Payee for any property funded under this Agreement;

All policies of insurance shall, subject to the terms of the indemnity provisions,

- (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
- (b) show all values in Canadian Funds;
- (c) be maintained continuously during the course of carrying out the Services; or for such period of time as may be required after completion of the Services, as deemed necessary by the City, but in all cases for a period of not less than 24 calendar months from the date of the completed operations in accordance with the Schedules;
- (d) provide for a deductible amount of no greater than \$10,000; or such other amount as the City, at its sole discretion, may deem appropriate;
- (e) (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance) include the

City named as an additional insured, to the extent of the Recipients obligations to the City under the Agreement;

- (f) contain cross liability and severability of interest provisions, as may be applicable;
- (g) preclude subrogation claims against the City and any other person insured under the policy;
- (h) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Recipient before the Recipient takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof; and,
- (i) in the case of Commercial General Liability Insurance and Errors and Omissions Insurance, when so requested by the City, the Recipient shall notify the City of any and all claims in respect of this policy of insurance that are in excess of twenty-five thousand dollars (\$25,000). If such claims reduce the aggregate coverage amount available from the limits described herein, or as subsequently amended by agreement between the City and the Recipient, then the City may require the Recipient acquire additional insurance coverage to ensure that the aggregate limits are maintained at levels described above. The Recipient shall bear the cost of acquiring such additional insurance.

- 10.2 **Proof of Insurance.** The Recipient shall provide the City with a certificate of insurance prior to execution of the Agreement and from time to time keep on file with the City renewal agreements and other documents sufficient to show and establish accurately at all times the current status of policies in force, and in particular shall submit to the City, not later than 15 days before the expiration of every current policy, evidence of the renewal of the policy or the issuance of a replacement policy. Certificate Holder shall be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn: Children's and Community Services Division. All certificates, cancellation, non-renewal or adverse change notices shall be mailed to this address.

ARTICLE 11 TERMINATION ON NOTICE

- 11.1 Either Party may terminate the Agreement in whole or in part with respect to the provision of any particular service upon 90 days' written notice to the other Party. If the Agreement is terminated in part, all obligations with respect to provision of all other Services continue in full force and effect.

ARTICLE 12
TERMINATION WHERE MINISTRY FUNDING CEASES

- 12.1 The City may terminate the Agreement immediately and/or withhold any payment of Funds, if:
- (a) City Council does not approve funding to the Recipient;
 - (b) the Ministry ceases providing funding to the City for the Services; or
 - (c) if the Provincial Agreement is terminated for any reason.

ARTICLE 13
EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

- 13.1 **Events of Default.** Each of the following events shall constitute an “**Event of Default**”:

- (a) in the opinion of the City, the Recipient has knowingly provided false or misleading information regarding its request for funds or in any other communication with the City;
- (b) in the opinion of the City, the Recipient breaches any material requirement of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) providing the Services;
 - (ii) use or spend Funds;
 - (iii) apply the Funds towards Eligible Costs;
 - (iv) provide Reports or such other reports as may have been requested pursuant to section 6.1(b); and/or
 - (v) failure to hold a valid, unconditional licence under the *Child Care and Early Years Act, 2014* (Ontario) at all times, where required by applicable legislation;
- (c) the nature of the Recipient’s operations, or its corporate status, changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which the City provides the Funds;
- (d) there has been a Material Change in the Recipient without the prior written consent of the City;

- (e) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
- (f) the Recipient ceases to operate; and
- (g) an event of Force Majeure that continues for a period of 60 days or more.

13.2 **Corrective Action.** If an Event of Default occurs, the City may, at any time, take one or more of the following actions:

- (a) initiate any action the City considers necessary in order to facilitate the successful continuation or provision of the Services;
- (b) suspend the payment of Funds for such period as the City determines appropriate;
- (c) reduce the amount of the Funds;
- (d) cancel all further installments of Funds;
- (e) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by the City;
- (g) demand the repayment of an amount equal to any Funds the City provided to the Recipient; and/or
- (h) terminate the Agreement immediately upon giving Notice to the Recipient.

13.3 **Opportunity to Remedy.** In addition to its rights provided for in section 13.2, the City may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- (a) of the particulars of the Event of Default; and
- (b) of the period of time within which the Recipient is required to remedy the Event of Default.

13.4 **Recipient not Remediating.** If the City has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 13.3 and:

- (a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;

- (b) it becomes apparent to the City that the Recipient cannot completely remedy the Event of Default within the time period specified in the Notice or such further period of time as the City considers reasonable; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the City,

the City may initiate any one or more of the actions provided for in sections 13.2.

- 13.5 **Effective date.** The effective date of any termination under this Article shall be the last day of the Notice period, the last day of any subsequent Notice period or immediately, whichever applies.

ARTICLE 14 FUNDS AT THE END OF A FUNDING YEAR

- 14.1 **Funds at the End of a Funding Year.** Without limiting any rights of the City under Article 11, 12 or 13, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the City may:
- (a) demand the return of the unspent Funds;
 - (b) adjust the amount of any further installments of Funds accordingly; or
 - (c) allow the unspent Funds to be applied to the subsequent Funding Year, provided that any unspent Funds at the end of the third Funding Year shall be returned to the City.

ARTICLE 15 FUNDS UPON EXPIRY

- 15.1 **Funds Upon Expiry.** Without limiting any rights of the City under Article 11, 12 or 13, the Recipient shall, upon termination of the Agreement, return to the City any Funds remaining in its possession or under its control.

ARTICLE 16 REPAYMENT

- 16.1 **Debt Due.** If the Recipient owes any monies, including any Funds, to the City, whether or not their return or repayment has been demanded by the City, such monies shall be deemed to be a debt due and owing to the City by the Recipient and the Recipient shall pay or return the amount to the City immediately unless the City directs otherwise.

- 16.2 **Interest Rate.** The City may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the City on accounts receivable.
- 16.3 **Payment of Monies to City.** The Recipient shall pay any monies owing to the City by cheque payable to the “City of Hamilton” and mailed to the City at the address provided in section 18.1.

ARTICLE 17 NO DISCRIMINATION

- 17.1 **Human Rights Code.** It is a condition of the Agreement and of every other agreement entered into pursuant to the performance of the Agreement, that no right under section 1 or 5 of the *Human Rights Code* will be infringed. Breach of this condition is sufficient grounds for immediate termination of the Agreement and no further notice is required.
- 17.2 **Families in Receipt of Subsidies and with Special Needs.** Without limiting the generality of section 17.1, the Recipient shall provide Services to families who are in receipt of fee subsidies and have children with special needs.
- 17.3 **Same Compensation to Workers.** The Recipient shall compensate its employees and contracted workers who are servicing families in receipt of fee subsidies at the same rate as its employees and contracted workers who are not servicing such families.

ARTICLE 18 NOTICE

- 18.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail, personal delivery, facsimile or email and shall be addressed to the City and the Recipient respectively as set out below or at such other address as either Party shall later designate to the other in writing:

To the City:

City of Hamilton
Healthy & Safe Communities
Children’s and Community Services
P.O. Box 2040, 6th Floor Lister Building
Hamilton ON, L8P 4Y5

Attention: Program Manager

Fax: 905-546-4668
Email: CCSS@hamilton.ca

To the Recipient:

-
Hamilton ON
-

Attention:-

Fax:
Email: -

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after such Notice is mailed; or
- (b) in the case of personal delivery, on the day such Notice is received by the other Party;
- (c) in the case of facsimile or email, on the day such Notice is sent, but if the day is not a business day, then on the first business day thereafter.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by personal delivery, facsimile or email.

ARTICLE 19 SEVERABILITY OF PROVISIONS

19.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

ARTICLE 20 WAIVER

20.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 16. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 21 INDEPENDENT PARTIES

21.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the City and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 22 ASSIGNMENT OF AGREEMENT OR FUNDS

- 22.1 **No Assignment by Recipient.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the City.
- 22.2 **Enurement.** The Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- 22.3

ARTICLE 23 GOVERNING LAW

- 23.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.
- 23.2 **Reference to Laws.** A reference to any statute, law, by-law, rule, regulation, policy, guideline, ordinance, notice, ruling or order or to a provision thereof will be deemed to include a reference to any substitution therefor or amendment thereof.

ARTICLE 24 FURTHER ASSURANCES

- 24.1 **Agreement into Effect.** The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent.

ARTICLE 25 CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 25.1 **Force Majeure Means.** For the purposes of the Agreement, “**Force Majeure**” means an event that:
- (a) is beyond the reasonable control of a Party; and
 - (c) makes a Party’s performance of its obligations under the Agreement impossible, or so impracticable as reasonable to be considered impossible in the circumstances.

25.2 Force Majeure Includes. Force Majeure includes:

- (a) infectious diseases, war, riots and civil disorder;
- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) confiscation and other similar action by government agencies;
- (d) lawful act by a public authority; and
- (e) strikes, lockouts and other labour actions,

if such events meet the test set out in section 25.1.

25.3 Force Majeure Shall Not Include. Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- (b) any event that a diligent Party could reasonably have been expected to:
 - (i) take into account at the time of the execution of the Agreement; and
 - (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

25.4 Failure to Fulfill Obligations. Subject to section 13.1(f), the failure of either Party to fulfill any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

ARTICLE 26 SURVIVAL

26.1 Survival. All obligations of the Parties will expressly, or by their nature, survive termination or expiration of the Agreement until, and unless, they are fulfilled, or by their nature expire. Without limiting the generality of the foregoing, the provisions of Article 6 shall survive for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 27 SCHEDULES

- 27.1 **Schedules.** The Agreement includes schedules describing the Services, Budget, Reports and other matters pertaining to the grant of Funds, whether or not they are physically attached to this Agreement. The Schedules may be amended from time to time throughout the Funding Year, upon the written consent of the Parties. The Schedules may take different forms as prescribed by the City, and may include applications for funding from the Recipient, which have been approved in writing by the City.

ARTICLE 28 COUNTERPARTS

- 28.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 29 ENTIRE AGREEMENT

- 29.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 29.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.
- 29.3 **Conflict.** Where there is any ambiguity or conflict between the provisions contained in the body of the Agreement and the provisions contained in other documents that the Recipient shall comply with, the order of precedent is as follows:
- a) *Child Care and Early Years Act, 2014*, as amended, and its regulations.
 - b) Funding Agreement;
 - c) Schedule "A";
 - d) Funding Appendix;
 - e) City of Hamilton Child Care and Early Years Operating Guidelines

Signatures on next page:

The Parties have executed the Agreement on the dates set out below.

RECIPIENT(S)

Signature: _____

Name: _____

Title: _____

Date: _____

I have authority to bind the corporation.

Signature: _____

Name: _____

Title: _____

Date: _____

I have authority to bind the corporation.

CITY OF HAMILTON

Signature: _____

Name: _____

Title: _____

Date: _____